IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

EFA.No. 4 of 1998()

AGAINST THE ORDER DATED 14/01/1998 IN EA 540/97 IN
OS.60/1988 of SUB COURT, CHERTHALA
.....

APPELLANT: PETITIONER:

PATHUMA W/O.KASSIM, RESIDING AT VADAKKEMANAM
KARICHIYIL, CHELATTUBHAGOM MURI,
PANAVALLY VILLAGE.

BY ADV. SRI.SAIGI JACOB PALATTY

RESPONDENTS: CR. PETITIONERS
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1. P.S.GOPINATHAN NAIR,
PIZHARATHUVEEDU, PANAVALLY MURI,
PANAVALLY VILLAGE.

2. P.K.KOCHU MUHAMMED, S/O.KASSIM
SRAMBICKAL VILLAYIL, PANAVALLY MURI
PANAVALLY VILLAGE.

BY ADV. SMT.AYSHA YOUSEFF
SRI.V.K.SIDHIQUE

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

E.F.A.No. 4 of 1998

Dated this the 8th August, 2007.

J U D G M E N T

A stranger to O.S.No.60/1988, on the file of the Sub Court, Cherthala, is the appellant. The second respondent who is the son of the appellant owed money to the first respondent, decree holder. For realisation of the amount, the petition scheduled property was sold through court auction on 2.12.1995. Appellant filed O.S.No.679/1996 for declaration of her title and possession, and also for Injunction. In that case, she filed an application for injunction. That petition was dismissed and sale was conducted. Thereafter, she filed a petition under Order XXI Rule 90 of Civil Procedure Code contending that judgment debtor has saleable interest over the property, and there are material irregularities in conducting the sale. Executing Court dismissed that application. Challenging that application, this appeal is filed.

2. In the E.F.A., appellant has filed C.M.P.No.440/1998 for a stay of delivery of the property. This Court passed a conditional order to the effect that in case the appellant deposits an amount of Rs.30,000/=, and the balance due under decree in two instalments within three months thereafter, the delivery will stand stayed.

3. The first respondent, decree holder, filed C.M.P.No.3315/1998, for withdrawing the amount deposited by the appellant. In paragraph 2 of the affidavit, it is admitted that the appellant had deposited an amount of Rs.30,000/= and paid the entire balance amount due to him under the decree directly. The entire decree debt was paid to the respondent. Hence, it is only just and proper that the sale conducted on 2.12.1995 is set aside, and this appeal is allowed.

In the result, the appeal is allowed. The Order passed by the court below dismissing E.A.No.540/97 in O.S.No.60/88 is allowed. The sale of petition scheduled properties conducted on 2.12.1995 is hereby set aside. Parties are directed to suffer their respective costs.

C.M.P.No.440/1998 in E.F.A.No.4/1998 is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

E.F.A.No.4 of 1998

J U D G M E N T

Dated: 8th August, 2007.